

§ 1.36

37 CFR Ch. I (7–1–08 Edition)

or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party on whose behalf he or she acts. In filing such a paper, the patent practitioner must set forth his or her registration number, his or her name and signature. Further proof of authority to act in a representative capacity may be required.

[70 FR 56127, Sept. 26, 2005]

§ 1.36 Revocation of power of attorney; withdrawal of patent attorney or agent.

(a) A power of attorney, pursuant to § 1.32(b), may be revoked at any stage in the proceedings of a case by an applicant for patent (§ 1.41(b)) or an assignee of the entire interest of the applicant, or the owner of the entire interest of a patent. A power of attorney to the patent practitioners associated with a Customer Number will be treated as a request to revoke any powers of attorney previously given. Fewer than all of the applicants (or fewer than all of the assignees of the entire interest of the applicant or, in a reexamination proceeding, fewer than all the owners of the entire interest of a patent) may revoke the power of attorney only upon a showing of sufficient cause, and payment of the petition fee set forth in § 1.17(f). A patent practitioner will be notified of the revocation of the power of attorney. Where power of attorney is given to the patent practitioners associated with a Customer Number (§ 1.32(c)(2)), the practitioners so appointed will also be notified of the revocation of the power of attorney when the power of attorney to all of the practitioners associated with the Customer Number is revoked. The notice of revocation will be mailed to the correspondence address for the application (§ 1.33) in effect before the revocation. An assignment will not of itself operate as a revocation of a power previously given, but the assignee of the entire interest of the applicant may revoke previous powers of attorney and give another power of attorney of the assignee's own selection as provided in § 1.32(b).

(b) A registered patent attorney or patent agent who has been given a power of attorney pursuant to § 1.32(b) may withdraw as attorney or agent of record upon application to and approval by the Director. The applicant or patent owner will be notified of the withdrawal of the registered patent attorney or patent agent. Where power of attorney is given to the patent practitioners associated with a Customer Number, a request to delete all of the patent practitioners associated with the Customer Number may not be granted if an applicant has given power of attorney to the patent practitioners associated with the Customer Number in an application that has an Office action to which a reply is due, but insufficient time remains for the applicant to file a reply. See § 41.5 of this title for withdrawal during proceedings before the Board of Patent Appeals and Interferences.

[69 FR 49997, Aug. 12, 2004, as amended at 70 FR 56128, Sept. 26, 2005]

WHO MAY APPLY FOR A PATENT

§ 1.41 Applicant for patent.

(a) A patent is applied for in the name or names of the actual inventor or inventors.

(1) The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by § 1.63, except as provided for in §§ 1.53(d)(4) and 1.63(d). If an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless applicant files a paper, including the processing fee set forth in § 1.17(i), supplying or changing the name or names of the inventor or inventors.

(2) The inventorship of a provisional application is that inventorship set forth in the cover sheet as prescribed by § 1.51(c)(1). If a cover sheet as prescribed by § 1.51(c)(1) is not filed during the pendency of a provisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(c), unless applicant files a paper including the processing fee set forth in § 1.17(q),

supplying or changing the name or names of the inventor or inventors.

(3) In a nonprovisional application filed without an oath or declaration as prescribed by § 1.63 or a provisional application filed without a cover sheet as prescribed by § 1.51(c)(1), the name, residence, and citizenship of each person believed to be an actual inventor should be provided when the application papers pursuant to § 1.53(b) or § 1.53(c) are filed.

(4) The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, which includes any change effected under PCT Rule 92*bis*. See § 1.497(d) and (f) for filing an oath or declaration naming an inventive entity different from the inventive entity named in the international application, or if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any declaration filed under PCT Rule 4.17(iv) (§ 1.48(f)(1) does not apply to an international application entering the national stage under 35 U.S.C. 371).

(b) Unless the contrary is indicated the word “applicant” when used in these sections refers to the inventor or joint inventors who are applying for a patent, or to the person mentioned in §§ 1.42, 1.43, or 1.47 who is applying for a patent in place of the inventor.

(c) Any person authorized by the applicant may physically or electronically deliver an application for patent to the Office on behalf of the inventor or inventors, but an oath or declaration for the application (§ 1.63) can only be made in accordance with § 1.64.

(d) A showing may be required from the person filing the application that the filing was authorized where such authorization comes into question.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2708, Jan. 20, 1983; 48 FR 4285, Jan. 31, 1983, as amended at 62 FR 53184, Oct. 10, 1997; 65 FR 54662, Sept. 8, 2000; 67 FR 523, Jan. 4, 2002]

§ 1.42 When the inventor is dead.

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath

or declaration, and apply for and obtain the patent. Where the inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2709, Jan. 20, 1983]

§ 1.43 When the inventor is insane or legally incapacitated.

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may make the necessary oath or declaration, and apply for and obtain the patent.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2709, Jan. 20, 1983]

§ 1.44 [Reserved]

§ 1.45 Joint inventors.

(a) Joint inventors must apply for a patent jointly and each must make the required oath or declaration: neither of them alone, nor less than the entire number, can apply for a patent for an invention invented by them jointly, except as provided in § 1.47.

(b) Inventors may apply for a patent jointly even though

(1) They did not physically work together or at the same time,

(2) Each inventor did not make the same type or amount of contribution, or

(3) Each inventor did not make a contribution to the subject matter of every claim of the application.

(c) If multiple inventors are named in a nonprovisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter of at least one claim of the application and the application will be considered to be a joint application under 35 U.S.C. 116. If multiple inventors are named in a provisional application, each named inventor must have made a contribution, individually or jointly, to the subject